

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**MOTION OF PODHURST ORSECK, P.A. FOR LEAVE TO FILE SUR-REPLY TO
NFL PARTIES' MOTION SEEKING APPOINTMENT OF SPECIAL INVESTIGATOR**

Class Counsel, Podhurst Orseck, P.A., respectfully moves for leave to file the attached sur-reply to address a new argument the NFL Parties raised in their reply (ECF No. 9972) in support of their motion to appoint a special investigator (ECF No. 9880). Straying from the substance of the arguments raised in their motion, or in our opposition thereto, the NFL Parties veer off into a speculative attack on Class Counsel's *motives* for opposing their motion. Their accusation is misguided and unseemly, and we should be given an opportunity to respond to it through the attached two-page sur-reply. Specifically, the NFL Parties speculate that our opposition to their motion is motivated by a financial "self-interest," because the claims of a few

of our clients have been the subject of adverse audit reports. (ECF No. 9972 at 6.) Lest the Court's view of this issue, or of our firm, be colored by this side-swipe at our integrity, we should be given leave to respond to that narrow, new accusation. *See Hess Fence & Supply Co. v. U.S. Fid. & Guar. Co.*, No. CIVA 4:04CV2648, 2006 WL 3325445, at *2 (M.D. Pa. Oct. 12, 2006) (granting leave to file a sur-reply "to respond to new arguments in [opponent's] reply brief"). Permitting such a sur-reply "will only help the court more fairly decide" the underlying motion. *Id.*

Accordingly, Podhurst Orseck respectfully seeks leave to file the attached sur-reply in opposition to the NFL Parties' motion to appoint a special investigator.

DATED: May 11, 2018

Respectfully submitted,

PODHURST ORSECK, P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2018, I caused the foregoing document to be filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, which will provide electronic notice to all counsel and parties.

/s/ Steven C. Marks
Steven C. Marks, Esq.